



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., February 19, 2008

This issue contains the following:

Ban on Nigeria Deployment only applies to coastwise shipping

Fake Medical Certificates

Execution on Appeal - Judicial Courtesy – now a dead argument?

Ban on Nigeria deployment only applies to cabotage or coastwise shipping

The POEA governing board in a meeting yesterday has advised that the ban on Nigeria deployment will no longer cover Filipino seafarers on-board liner vessels but will cover only seafarers on-board vessels engaged in “cabotage” or so-called coastwise shipping. The POEA has advised that it will no longer issue a new Advisory regarding this latest development on the deployment ban.

Chronology of Events

17 December 2007. The Department of Labor and Employment (DOLE) banned deployment of all workers to Nigeria (including Iraq, Afghanistan and Lebanon). The POEA was tasked to impose both criminal and administrative sanctions including the immediate suspension of recruitment licenses on manning agencies violating the ban (DOLE Memorandum dated 17 December 2007).

31 January 2008. Pursuant to the DOLE memorandum, the POEA clarified that the ban covers Filipino crew on board ships entering Nigerian ports and further directed the manning agencies to inform their principals that Filipino seafarers are not allowed to enter any port in Nigeria to ensure their safety and security (POEA Advisory No. 3, Series of 2008, undated).

5 February 2008. The Filipino Association of Mariners Employment requested the POEA for clarification as follows:

1. Will manning agencies that have no control over the trade of the vessel be subject to sanctions?
2. Will seafarers who refuse to sail have a valid ground to pre-terminate their contract and demand repatriation?
3. Will manning agencies who inform their principals of the ban be considered in compliance with the POEA advisory?

7 February 2008. The POEA "clarified that the ban on the entry of Filipino seafarers to Nigeria shall cover only seafarers on board vessels on liner service calling on Nigerian ports" (POEA Advisory No. 5, Series of 2008, undated)

7 February 2008. FAME wrote a letter to Secretary of Labor Arturo Brion requesting for a review of the advisory in view of the adverse effects on the manning industry.

18 February 2008. The POEA governing board has advised that the ban on deployment of Filipino seafarers only covers those engaged in "cabotage" or coastwise shipping.

Fake medical certificates

We have confirmation from a seafarer's doctor that he has not issued certain medical certificates presented in evidence in the NLRC. We also have his confirmation that some of his medical certificates were "forged". Please ensure that your counsel verifies the medical certificates used in evidence by the seafarer's counsel.

Execution on Appeal - Judicial Courtesy - now a dead argument?

One of the arguments against execution of the NLRC decision while a Petition for Certiorari has been filed with the Court of Appeals is "judicial courtesy". "Judicial courtesy" means that the NLRC must not execute a decision out of respect or courtesy to the appellate court as said court will still decide the case. Judicial courtesy does not require a TRO to be issued in order for the NLRC to wait for the appellate court's decision before execution of a decision.

Unfortunately, Section 7 of Rule 65 of the Revised Rules of Civil Procedure was amended in December 27, 2007. The rule now state that "the petition (for certiorari) shall not interrupt the course of the principal case unless a temporary restraining order (TRO) or writ of preliminary injunction" is issued. It further states that the public respondent (this means the Labor Arbiter) is **required "to proceed with the principal case" and failure thereof "may be a ground for an administrative charge."**

Labor Arbiters now seem to have added basis in enforcing the NLRC judgment despite a pending Petition in the Court of Appeals. Only a TRO from the Court of Appeals can restrain the execution of the decision.

The entire Section 7 of Rule 65 reads:

Sec. 7. Expediting proceedings; injunctive relief. The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.

The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com.

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